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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/014,687 01/28/98 DAWES

N 551P04US

EXAMINER

LM02/1228

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JONES, P

ART UNIT

PAPER NUMBER

2735

AIR MAIL

DATE MAILED:

12/28/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/014,687

Applicant(s)

Dawes

Examiner

Prenell Jones

Group Art Unit
2735



☒ Responsive to communication(s) filed on Jan 28, 1998

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 1-8 is/are pending in the application

Of the above, claim(s) _____ is/are withdrawn from consideration

☒ Claim(s) 1-3 is/are allowed.

☒ Claim(s) 4-8 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☒ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☒ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 5

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 4, 5, 6, 7 and 8 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 4, 5 and 6 lack enablement, specifically, there appears to be steps missing in the claims describing the method. Claims 7 and 8 depend on claims 4, 5 or 6, therefore is rejected for the same reason that claims 4, 5 and 6 are rejected.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 4, 5, 6, 7 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 4, 5 and 6 does not clearly describe a method. It

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appears that some steps are missing. Claims 7 and 8 are dependents of claims 7 and 8, therefore is rejected for the same reason that claim 4, 5 and 6 are rejected.

Allowable Subject Matter

5. Claims 1, 2 and 3 are allowed.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schenkel et al in view Stevenson.

Regarding claim 4, Schenkel discloses the use of (col. 18, last paragraph) mean value of traffic parameters for devices, (col. 15, last paragraph) analysis for diagnosis and drop rate. However, Schenkel is silent on the use transit delay. In analogous art, Stevenson (col. 9, line 34-40)

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discloses the use of transit delays in the detection of congestion for path testing in a communication network. In addition, it is well known in the art to use devices that transmit/receive frames in a communication system. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to implement a method of mean transit delay through one or more devices which send/receive frames as evidenced by Schenkel in view of Dawes and Stevenson because Schenkel suggests the use of mean value of traffic parameters for devices and Stevenson suggests the use of transit delays in the detection of congestion for path testing in a communication network.

8. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schenkel et al.

Regarding claim 5, Schenkel discloses the use of (col. 18, last paragraph) mean value of traffic parameters for devices (col. 15, last paragraph) analysis for diagnosis and drop rate. Schenkel is silent on the use of receiving/forwarding frames in communication devices. However, it is well known in the art to use devices that transmit/receive frames in a communication system in the transmission of data. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to implement a method that determines a mean drop rate of frames through one or more communication devices that receive/forward frames as evidenced by Schenkel because he suggests the use of mean value of traffic parameters for devices, analysis for diagnosis

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and drop rate and the use of devices that transmit/receive frames in a communication system in the transmission of data as being well know in the art.

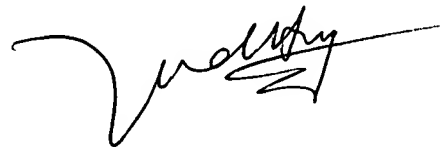
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Prenell Jones whose telephone number is (703) 305-0630. The examiner can normally be reached on Monday thru Friday from 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Horabik, can be reached on (703) 305-4704. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3988.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Prenell Jones

December 20, 1999



HUY D. VU
PRIMARY EXAMINER